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**A Report to the 50th Legislature
Joint Interim Subcommittee
on Lien Laws**

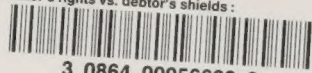
November 1986



Montana Legislative Council

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CREDITOR'S RIGHTS

vs.

DEBTOR'S SHIELDS

A REPORT TO THE 50TH LEGISLATURE

JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS

November 1986

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Room 138
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SENATE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF MONTANA'S LIEN LAWS.

WHEREAS, Montana adopted its basic lien laws from the "Field Code" shortly after becoming a state; and

WHEREAS, the Legislature has added to and amended the basic lien laws of Montana, including the adoption of the Uniform Commercial Code in 1963, without comprehensive analysis of the various statutes that provide for liens; and

WHEREAS, there have been introduced in the 49th Legislative Session numerous and conflicting bills dealing with delayed recording, lien priorities, place of filing, centralized filing, purchase free of lien, and other subjects which indicate that Montana's lien laws are confusing and that relative lien priorities are possibly unfair; and

WHEREAS, it is essential to the economic growth of the State of Montana that the lien laws not hinder or obstruct the free flow of credit, especially in the agricultural area; and

WHEREAS, there is insufficient time during a regular legislative session to resolve the conflicting legislation or to provide a comprehensive, careful study of the existing lien laws, after considering all relevant factors, and there is insufficient time to receive information from the public, those concerned with the lien laws, and those obtaining and providing credit.

NOW, THEREFORE BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to:

(1) examine Montana laws relating to liens, including Montana's basic lien laws and the Uniform Commercial Code;

(2) study the problems of delayed recording, lien priorities, conflicting lien priorities, and other related subjects;

(3) study the problems with place of filing and the possibility of centralized lien filing;

(4) obtain testimony and information relevant to Montana's lien laws as they may affect those who obtain or grant credit, including:

(a) testimony and information addressing the conflicting positions of persons asking for preferential lien priority;

(b) the apparent conflict or lack of uniformity of present laws covering lien priorities; and

(c) any other matters pertinent to the effects of lien laws on such persons;

(5) study the laws of other states relating to liens and lien priorities, recordation, and other relevant matters;

(6) draft legislation to implement its recommendations, if necessary; and

(7) report its findings to the 50th Legislature.

Approved April 10, 1985.

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APPENDIX

Recommended Legislation:

- LC 116 ESTABLISHING LIEN RIGHTS FOR PHYSICAL
THERAPISTS AND OCCUPATIONAL THERAPISTS.
- LC 192 AMENDING SECTION 31-2-106, MCA, TO INCLUDE AS
EXEMPT PROPERTY IN A BANKRUPTCY PROCEEDING
ALL PROPERTY OF AN INDIVIDUAL DEBTOR EXEMPT
FROM EXECUTION OF JUDGMENT AS PROVIDED IN THE
MONTANA CODE ANNOTATED.
- LC 194 REQUIRING THAT A FINANCING STATEMENT COVERING
EQUIPMENT USED IN FARMING OPERATIONS IDENTIFY
THE COLLATERAL BY MODEL AND SERIAL NUMBERS.
- LC 281 A GENERAL REVISION OF THE LAWS RELATING TO
PROPERTY EXEMPT FROM EXECUTION.
- LC 282 A GENERAL REVISION OF LAWS RELATING TO
MECHANICS' LIENS.
- LC 283 REQUIRING NOTICE TO THE OWNER OR PERSON WHO
CONTRACTED FOR THE SERVICES OR MATERIALS
PRIOR TO SHERIFF'S SALE OF PROPERTY SOLD TO
ENFORCE AN AGISTER'S LIEN OR LIEN FOR
SERVICES.

LEGISLATIVE RECOMMENDATIONS

During the 18 months of its existence, the Joint Interim Subcommittee on Lien Laws met seven times and closely scrutinized all aspects of Montana's laws on secured transactions and on exemptions from execution of judgment.

A huge volume of information was generated through staff research and through oral testimony and documents presented by knowledgeable concerned citizens, businessmen, attorneys, and trade association representatives. The Subcommittee's zealous efforts to elicit all pertinent facts drew spirited response from elements of the business and professional communities whose cogent arguments provided the members a solid understanding of the problems facing both creditors and debtors.

The information upon which the Subcommittee's recommendations are based is summarized in the body of this report, and all supporting documents are on file with the Subcommittee's records in the Legislative Council's archives.

The Subcommittee concluded its research and deliberations by requesting the drafting of the following bills, which it respectfully recommends for enactment by the 50th Legislature:

LC 116 - Amend the Physician, Nurse, and Hospital Lien Act of 1979 to include physical therapists and occupational therapists among those entitled to liens under the Act.

LC 192 - Amend Section 31-2-106, MCA, to include in property exempt from execution in bankruptcy proceedings:

benefits under the various retirement plans for public employees, officials, teachers, law enforcement officers, firemen, and judges; property exempt under Title 25, chapter 13, part 6; benefits paid by fraternal societies; group life insurance benefits; disability insurance benefits; annuity contract benefits; partner's rights in specific partnership property; unemployment compensation benefits; workers' compensation benefits; silicosis benefits; public assistance benefits; awards under The Crime Victims Compensation Act of Montana; and hail insurance benefits.

LC 194 - Amend Section 30-9-402, MCA, to include as a requisite of a financing statement covering a farm implement or machine the model and serial numbers of the item of collateral if such numbers are assigned to the item.

LC 261 - Amend or repeal sections of Title 25, chapter 13, part 6; Title 70, chapter 32; and Title 72, chapter 2, part 8, MCA; and creates seven new sections of the Montana Code Annotated to strike anachronistic laws and modernize the laws on property exempt from execution of judgment.

LC 282 - Amend Title 71, chapter 3, part 5, MCA, to modify the Mechanic's Lien Law into a Construction Lien Law that allows the attachment and enforceability of a construction lien against real estate in favor of a person furnishing services or materials under a real estate improvement contract and to provide that a nonconsensual lien against real estate for improvements made thereon may not arise except under the act.

LC 283 - Amend Title 71, chapter 3, part 12, to correct constitutional deficiencies in the Agister's Lien Law noted following a Montana Supreme Court decision in 1986.

See Appendix for complete text of all bills recommended for enactment by the Joint Subcommittee on Lien Laws.

SYNOPSIS OF THE SUBCOMMITTEE'S
REVIEW AND ANALYSIS

EXEMPTIONS FROM EXECUTION

Reviewed in detail by the Subcommittee was Montana's statutory protection of certain property from execution as provided in Sections 25-13-601 through 25-13-617, generally regarded as archaic and ineffectual under current circumstances.

The exemption statutes are derived basically unchanged from Territorial law with only minor amendments or modifications in the past half century. The Subcommittee recommended changes to allow realistic exemptions under modern circumstances.

During its consideration of the exemptions laws, the Subcommittee was advised by David J. Fried, Associate Professor, School of Law, University of Montana, whose outline "Getting the Money in Montana" was prepared for the Continuing Legal Education program sponsored by the State Bar of Montana.

Commenting on the difficulty of collecting debts in Montana, Professor Fried reminded the Subcommittee at its first meeting that Montana's Constitution requires enactment of liberal homestead and exemption laws and observed:

Establishment of priorities under statutory liens is largely a political decision although priority under a judgment lien is usually a matter of "first in time, first in right." Foreclosure sale is next step in obtaining satisfaction of a money judgment.

Effectiveness of a lien depends on the lienee possessing property available for attachment, and the value of a lien must be measured in relationship to the exemptions. The exemption statutes are hopelessly out of date and should be modernized. A substantial bias in favor of a wealthy debtor exists in the exemption statutes. A monetary limit on personal exemptions to conform with the homestead exemption is suggested.

Recent Montana Supreme Court decision suggests that both the husband and the wife may individually claim the allowable \$40,000 homestead exemption for a total exemption of \$80,000.

Supreme Court interpretations of exemptions in Montana law appear to protect wages and salaries from garnishment. An anomaly in the law, however, subjects wages or salary income to attachment once it has been deposited in the debtor's bank account.

Exemptions for state employees' pension benefits probably are not justified in current circumstances.

All things considered, the law probably makes collection of just debts too difficult.

The laws establishing statutory liens are much more complex than they need to be.

The operation of "scramble redemption" complicates the foreclosure process by allowing any person who has an interest in the foreclosed

property to redeem it within one year by paying the obligation plus 6% interest, and all earnings of the property in that year are subject to return to the redemptioner. The risk imposed by "scramble redemption" may reduce the price offered at a foreclosure sale.

In its second meeting, the Subcommittee discussed the perceived problems associated with laws on exemptions from execution ranging from difficulty with collecting from divorced persons, increased cost of obtaining a writ, inadequate protection for wages essential for living expenses of a worker and his family, low monetary threshold for suits, difficulty in locating a debtor's bank accounts, relatively high homestead protection, inconsistencies with the bankruptcy statute, total allowable exemption level high enough to assure a minimum living style for the debtor, life insurance cash value, discrimination against private pensions plans in relationship to exemption allowed for public retirement benefits, and outdated personal property protections.

These subjects are discussed in detail in documents presented to the Subcommittee:

- "EXEMPTION REFORM IN MONTANA: PROBLEM AND POSSIBILITIES" by Professor Fried
- "EXEMPTION SCHEME: ISSUES TO CONSIDER" by Staff Attorney Mary Kelly McCue
- "DEBTOR'S EXEMPTION RIGHTS" by Mrs. McCue
- "DEBTOR'S EXEMPTION SCHEMES: FOUR EXAMPLES" by Mrs. McCue

Chairman Halligan, Vice Chairman Mercer, and Representative Krueger met in Missoula for two days on the pre-Christmas weekend in 1985 with the Staff Attorney and the Staff Researcher to draft a proposal on exemptions recommendations which was presented to the full Subcommittee on February 7, 1986, when it was further revised. The proposal to modernize the exemptions laws was further revised and finally adopted at the fifth meeting on June 15.

In effect, the Subcommittee's proposal provides:

- Homestead Exemption: \$40,000 unchanged, but portions allocated between joint tenants or tenants-in-common, limited to family residence; and in the Probate Code, homestead election available to a surviving spouse and/or surviving minor children with 72-2-801, MCA, amended to delete homestead allowance of \$20,000. Area limitation to be repealed. Establishment of appraiser's fee of \$3/day in 72-32-214 to be repealed to allow the court to fix a reasonable fee.
- Wages and Salaries: Conform to the federal law's provisions for exemption equal to 30 times federal minimum wage with garnishment allowed of lesser of 25% of disposable earnings or of the amount by which earnings exceed 30 times the minimum wage.
- Personal and Household Possessions: \$6,000 aggregate but not more than \$600 per item including all wearing apparel, wedding ring, and jewelry. Professionally prescribed health aids exempt without limit. Life insurance exempt up to \$4,000 cash value in unmaturred policy.

- Tools of Trade, Implements: Exempt up to \$3,000 value.
- Truck or Automobile: One motor vehicle up to \$3,500 value.
- Bankruptcy Code: Include, by reference, exemptions allowed in other titles of Montana Code Annotated for workers' compensation benefits, unemployment insurance benefits, public employees' retirement benefits, and others.
- Property Necessary for Government Functions: Repeal 25-13-613, MCA, to eliminate this law which has outlived its raison d'etre.
- Tracing Proceeds of Sales: Allow exemption of money identifiable as generated from the sale of exempt real property for up to 18 months and from sale of exempt personal property for up to six months.

CONSTRUCTION LIENS

Modification or replacement of Montana's Mechanics' Lien Law was the objective of two bills in the 1985 Legislature--SB 128 and HB 329--which were laid to rest in the Senate Judiciary Committee. Consideration of these bills focused attention on the demands of building materials dealers and contractors for effective lien rights and of property owners for protection against "secret liens".

The Mechanics' Lien Law is among Montana's oldest statutes: it was one of the Bannack Statutes enacted

by the original Territorial Assembly, refined and modified by dozens of later enactments.

Two opposing viewpoints were articulated before the Subcommittee and expressed in written submissions.

John R. Gordon, a Kalispell attorney, emerged as the chief spokesman for the proponents of the Uniform Construction Lien Law, which was the genesis of SB 128 in the 1985 session, and which enjoyed the support of the financial community. This law is a portion of the Uniform Simplification of Land Transfers Act.

Preferring to reinforce the framework of Montana's time-tested Mechanics' Lien Law with amendments to give them priority over lending institutions was a coalition of building materials dealers and construction contractors. J. Riley Johnson of Helena was the principal advocate for this group.

Proponents of a new Construction Lien Law based on the Uniform Simplification of Land Transfers Act described the Mechanics' Lien as Montana's only nonconsensual lien on real property, and it has been interpreted in more than 65 decisions of the Montana Supreme Court. An insurmountable obstacle under the current law is the inability to determine with certainty who supplied all the material for a particular project so all necessary lien waivers can be obtained. A law based on the Uniform Simplification of Land Transfers Act would provide a mechanism for a property owner to be informed about who might enforce a lien. The Act's Protected Person Provision prevents a lien from attaching to property bought for an individual's residential purposes unless he is notified before the deed passes.

Recalling the Legislature's 1985 rejection of SB 128, the Subcommittee attempted to combine the desirable features of the current Mechanics' Lien Law with the improvements offered by adoption of particular provisions of the Uniform Law.

Stressing the need for consumer protection against secret liens which could cause a property owner to pay twice for labor and materials, the coalition of builders and material suppliers endorsed the concept of the Protected Person. They argued for a simple notification process to eliminate the peril of double payment and to allow lien protection clauses in title insurance policies.

The coalition further argued against provisions allowing financial institutions to achieve absolute priority under a lien arising from a filing before notification of commencement of construction. Their objective was a law that assures workers and small businesses priority over lending institutions and a notification system that recognizes all mechanics' liens arising from the same project as equal in priority.

After devoting substantial portions of four meetings to hearing searching discussions of the relative advantages and disadvantages of the divergent features of the Uniform Act and Montana's Mechanics' Lien Law, the Subcommittee proposed adoption of a Construction Lien Law that would combine elements of both proposals to:

- (1) Recognize equal priority for all construction lien claimants working on the same real estate improvement project.

- (2) Allow a construction lien to attach to property improved to the extent of the value of the improvement and to have priority over mortgages if the improvement is severable.
- (3) Allow a lien on leased property for work contracted for by a lessee to attach to the extent of the lessee's interest but to the owner's interest only if he agreed in advance to the improvement.
- (4) Prevent unjust enrichment of the owner when a purchaser under contract for deed defaults on obligations for improvement of property which increases the value and to allow 45 days for removal of such improvements by the lienholder when possible without damaging the property.
- (5) Allow liens on proportional interests of condominium owners.
- (6) Establish that the street address or other nomenclature recognizable by a reasonable person is sufficient identification of property in a notice of right to lien.
- (7) Require suppliers and subcontractors to notify owners of their right to lien within 20 days of delivery or completion without depriving an employee of a subcontractor of his right to lien.
- (8) Provide exemption from notice of right to claim lien requirement for wage earners, small business, commercial and larger residential projects.

- (9) Require a lien claimant to serve notice of right to claim a lien upon the contracting owner and so notify the county clerk and recorder.
- (10) Require that notice of right to lien be filed in the office of the county clerk and recorder.
- (11) Recognize that the date of commencement of a project is the time of the first visible change in the property unless an earlier notice of commencement was filed with the clerk and recorder or with the lender providing the financing.
- (12) Provide that if an improvement is located wholly within platted lots, the lien applies only to the improvement and those lots, but if an improvement is not located wholly on one or more platted lots, the lien applies to the improvement and to so much of the smallest identifiable tract or parcel of land belonging to the owner on which the improvement is located as is necessary to satisfy the lien.
- (13) Establish priority of a construction lien over a previous encumbrance made to pay for the real estate improvement being liened.

AGRICULTURAL PRODUCTS

Businessmen such as livestock market operators and grain buyers are exposed under existing law to liability for paying twice for animals or crops which they purchase honestly and in good faith.

This situation prevails because the Uniform Commercial Code, in Section 30-9-307, MCA, provides:

A buyer in ordinary course of business ... other than a person buying farm products from a person engaged in farming operations takes free of security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

Without the protection of the "ordinary course of business" exemption, the buyer of crops or livestock may be required to pay twice if his seller fails to satisfy the security interest.

In the past, Montana offered a measure of protection to an agricultural lender by allowing him to file his lien in the courthouse of the county where the property was located and, as regards branded livestock, with the Department of Livestock, which then forwarded the information to each livestock auction market. Despite its obvious ineffectiveness on sales consummated outside auction markets or commercial grain markets, the system functioned well.

SB 129, identified as Chapter 683, Laws of 1985, changed procedures to require filing of liens on agricultural products in the office of the Secretary of State, who has established a computerized information system, and eliminated the necessity to file such liens with the clerk and recorder. The statutory requirement that a lien on branded livestock be filed with the Department of Livestock is preserved in 30-9-423, MCA, to provide livestock lenders further protection in addition to filing with the Secretary of State.

Livestock market operators are particularly concerned about the possibility of being required to pay twice for unbranded livestock and suggest that the good faith purchaser could be protected by statutorily relieving a third party of responsibility for payment to anyone other than the seller of unidentified livestock.

Various plans for requiring lenders to notify possible purchasers of the existence of liens have been suggested by purchasers of farm products.

The subject area was preempted, however, in the federal Food Security Act of 1985, which includes a section on clear title for agricultural commodities that overrides the farm products exception of the Uniform Commercial Code in all 50 states. It also offers creditors and lenders the option of protecting their security interests by informing buyers about the existence of liens.

The clear title provisions will become operative on December 22, 1986, one year after passage of the 1985 law.

Because of the congressional preemption of the field, this Subcommittee decided to take no action on the subject.

The Subcommittee did, however, by a majority vote, agree to approve the centralized notification filing option under the clear title provision of the Food Security Act of 1985 for buyers of agricultural products and to recognize the Secretary of State as the operator of the system.

AGRICULTURAL SUPPLIERS

Montana statutes recognize the rights of various segments of the agricultural production network against their debtors through authorization of crop liens for seed or grain, liens for hail insurance, threshers' liens, and crop or grain liens for spraying or dusting. Many other participants in the farm production chain have no legal remedy assuring speedy and certain collection of money due them for supplies provided before and during the growing cycle.

These problems are particularly severe for suppliers of fuels and petroleum products and agricultural chemicals and fertilizers. HB 819, which proposed a solution to these problems, was killed in the 49th Legislature on second reading in the House.

Because these products are consumed to propel the machines or vehicles necessary to modern production techniques or are applied directly to the soil or to the growing crops, repossession for nonpayment is impossible, and delivery is often made late in the production sequence after earlier suppliers have established prior liens.

Implement and parts dealers also lack specific statutory lien protection against their debtors but are protected under the Uniform Commercial Code, Chapter 9, insofar as security interests are recorded on machinery or implements.

The beneficial nature of centralized filing of security interests in the Secretary of State's office was generally acknowledged. For the protection of dealers

in motor fuels, chemicals, fertilizers, and other consumable products and for late suppliers, several witnesses advocated enactment of a notification-verification law such as is on the books in several states including Minnesota and Iowa. Under this scheme, a customer, upon placing an order, signs a request which the supplier submits to the bank for verification of the buyer's ability to pay. If approved by the bank, the request becomes an irrevocable letter of credit. If the bank replies negatively, the dealer may complete the sale but without priority position. The bank's failure either to approve or disapprove the request would allow the dealer to make the sale and create a lien equal to or higher than the bank's priority position.

The Subcommittee recommended that Chapter 683, Laws of 1985 (SB 129) be amended to require that to perfect a lien on an agricultural implement the security agreement must identify the machine by model number and serial number, if such numbers have been attached.

LAND SURVEYORS' LIENS

Because of varying interpretations of the eligibility criteria for mechanics' liens, the Montana Association of Registered Land Surveyors asked that their profession be named in Section 71-3-501, MCA, among those occupations who are entitled to have a mechanics' lien for services performed.

Architects are among the professionals named in 71-3-501 as entitled to mechanics' liens, and the registered land surveyors asked that they be similarly recognized.

Among the reasons for denying surveyors' liens under current law are:

- (1) survey was not an improvement to the land and thus not eligible for a mechanics' lien; and
- (2) since a survey was performed on a 10-acre parcel the mechanics' lien was invalid because it was filed on more than one acre.

The general rule is that enhancement of property is necessary to establish a lienable interest, but determination of enhancement of property is sometimes impossible for professionals such as surveyors and architects whose services are provided in advance of commencement of construction. If the project does not proceed, the argument could be made that the property was not enhanced.

A conflicting opinion was that the Uniform Simplification of Land Transfers Act seems to require only a change in the property, not necessarily enhancement, to qualify for a mechanics' lien.

The Subcommittee decided the language of the proposed new Construction Lien Act is broad enough to include land surveyors as those eligible for liens so no further action is needed.

PHYSICAL THERAPISTS, OCCUPATIONAL THERAPISTS

Citing the actions of insurance companies in denying them payments for their services from insured patients' benefits under health and disability policies, physical

therapists in private practice requested that they be included in the Physician, Nurse, and Hospital Lien Act (Title 71, chapter 3, part 11).

That act establishes lien rights for physicians, nurses, and hospitals for charges arising from treatment of a person injured through the fault or neglect of another or who is insured or is the beneficiary of insurance.

The Subcommittee members decided to recommend that physical therapists and occupational therapists be included among those entitled to liens under Title 71, chapter 3, part 11.

BANKRUPTCY EXEMPTIONS

A ruling in December 1985 by the bankruptcy judge in federal district court in Butte held that Workers' Compensation benefits are not subject to exemption from foreclosure in bankruptcy proceedings.

The ruling was based on Section 31-2-106, MCA, which limits the bankruptcy exemption to that property protected under Title 25, chapter 13, part 6.

Workers' Compensation benefits are protected from execution under 39-71-743, but are not listed in the general exemption law in Title 25, and thus are beyond the scope of the bankruptcy protection.

A number of retirement benefits are also exempt from execution under other MCA titles, such as Public Employees' Retirement, Teachers' Retirement, Judges' Retirement, Highway Patrol Retirement, Sheriffs'

Retirement, Police Retirement, Firefighters' Retirement, and Game Wardens' Retirement. None of these benefits are incorporated by reference by Title 25.

The bankruptcy court pointed out the obvious inconsistency in public policy that allows a debtor to exempt wages for 45 days but denies a retired person the same privilege.

The Subcommittee recommended that the statutes be amended to include Workers' Compensation, unemployment insurance benefits, public employees' retirement system benefits and others within the property exempt from bankruptcy proceedings.

AGISTER'S LIENS AND LIENS FOR SERVICE

About a month after the Subcommittee completed its information gathering process and instructed its staff to draft the legislation necessary to implement its recommendations, the Montana Supreme Court issued an opinion that suggested that the Agister's Lien could be in constitutional jeopardy if it should be subjected to challenge. Chief Justice Turnage by letter advised the Subcommittee:

Since the Court was able to render a decision in this case without reaching the constitutional issue, the Court did not reach the constitutionality of the statute in the majority opinion. However, most certainly, an issue will be raised in the future that directly requires addressing the constitutionality issue.

The agister's lien law of this state is an important part of the citizens' daily concerns.

If a lien claimant is required to hire legal counsel and resort to the courts for judicial foreclosure of such a lien, the time and cost involved would certainly be an undue burden for many small lien matters.

For example, if someone brought a television set to a repairman and the set would be worth \$100 and the repairs would be \$50, it is not reasonable to require several hundreds of dollars worth of attorney fees and court costs to accomplish a foreclosure when the owner didn't pay for the repairs.

One result which would be a great detriment to many low income people of the state would be that if they wanted repairs made to their televisions, automobiles and other personal property, the repair people would start demanding exorbitant, cash-in-advance deposits before services were rendered.

After considering the facts, the Subcommittee decided to recommend enactment of a bill that would amend the Agister's Lien law by requiring an "affidavit" rather than a "statement" from the creditor to the sheriff and actual notice by registered mail or otherwise.

EMISC:6296:ee/hm

SOURCES

David J. Fried, Associate Professor, University of Montana, Getting the Money in Montana.

National Conference of Commissioners on Uniform State Laws, Uniform Simplification of Land Transfers Act (1977).

California Law Revision Commission, 1982 Creditors' Remedies Legislation, September 1982.

Food Security Act of 1985, Congress of the United States.

In Re Larson (42 St. Rep. 2043), Order, United States Bankruptcy Court for the District of Montana, December 26, 1985.

Erwin Steiner, Construction Law in Wisconsin, Third Edition.

Builders Board, Oregon Department of Commerce, ORS Chapter 701 (Oregon Homebuilders Law) and excerpts from ORS Chapter 87 (Oregon Lien Law), effective October 15, 1983.

National Cattlemen's Association, Fact Sheet, Clear Title for Agricultural Commodities, March 1985.

Minnesota Statutes Annotated, Sections 514.950-514.959, Agricultural Production Input [Liens], 1986 Cumulative Annual Pocket Part.

Iowa Code Annotated, Chapter 570A, Agricultural Supply Dealer's Lien, 1986 Cumulative Annual Pocket Part.

Rose v. Myers (43 St. Rep. 1493), Montana Supreme Court opinion on agister's lien law.

Larry Akey, Chief Deputy Secretary of State, Ag Lien Filings and the Federal Farm Bill, April 25, 1986.

National Grain and Feed Association, Government and Grain, Historic Lien Legislation Enacted by Congress, December 24, 1985.

North Dakota Century Code Annotated, Chapter 35-09, agricultural liens.

Oregon Revised Statutes, Section 87.226, equal priority to all agricultural liens.

National Conference of Commissioners on Uniform State Laws, Uniform Exemptions Act, 1976, amended 1979.

APPENDIX

RECOMMENDED LEGISLATION

-

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING LIEN
6 RIGHTS FOR PHYSICAL THERAPISTS AND OCCUPATIONAL THERAPISTS;
7 AMENDING SECTIONS 71-3-1111, 71-3-1112, 71-3-1114,
8 71-3-1115, 71-3-1117, AND 71-3-1118, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 71-3-1111, MCA, is amended to read:
12 "71-3-1111. Short title. This part may be cited as the
13 "Physician, Nurse, Physical Therapist, Occupational
14 Therapist, and Hospital Lien Act of 1979."

15 Section 2. Section 71-3-1112, MCA, is amended to read:
16 "71-3-1112. Purpose. The purpose of this part is to
17 establish lien rights for physicians, nurses, physical
18 therapists, occupational therapists, and hospitals when a
19 person receiving medical treatment:

20 (1) is injured through the fault or neglect of
21 another; or
22 (2) is either insured or a beneficiary under
23 insurance."

24 Section 3. Section 71-3-1114, MCA, is amended to read:
25 "71-3-1114. Liens of physicians, nurses, physical

1 therapists, occupational therapists, and hospitals. (1)
2 Whenever a physician, nurse, physical therapist,
3 occupational therapist, or hospital renders services to a
4 person injured through the fault or neglect of another, the
5 physician, nurse, physical therapist, occupational
6 therapist, or hospital, upon giving the required notice of
7 lien, has a lien for the value of services rendered on:
8 (a) any claim or cause of action the injured person,
9 his estate, or successors may have for injury, disease, or
10 death;
11 (b) any judgment the injured person, his estate, or
12 successors may obtain for injury, disease, or death; and
13 (c) all money paid in satisfaction of such judgment or
14 in settlement of the claim or cause of action.
15 (2) If a person is an insured or a beneficiary under
16 insurance which provides coverage in the event of injury or
17 disease, a physician, nurse, physical therapist,
18 occupational therapist, or hospital, upon giving the
19 required notice of lien, has a lien for the value of
20 services rendered on all proceeds or payments, except
21 payments for property damage, payable by the insurer.
22 (3) The lien is subject to the lien of an attorney
23 provided in 37-61-420."

24 Section 4. Section 71-3-1115, MCA, is amended to read:
25 "71-3-1115. Notice of lien. (1) A physician, nurse,

1 physical therapist, occupational therapist, or hospital
 2 claiming a lien shall serve written notice upon the person
 3 and upon his insurer, if any, against whom liability for
 4 injury, disease, or death is asserted, stating the nature of
 5 the services, for whom and when rendered, the value of the
 6 services, and that a lien is claimed.

7 (2) A physician, nurse, physical therapist,
 8 occupational therapist, or hospital claiming a lien upon
 9 proceeds or payments payable by an insurer shall serve
 10 written notice upon the insurer against whom the lien is
 11 asserted, stating the nature of the services, for whom and
 12 when rendered, the value of the services, and that a lien is
 13 claimed."

14 Section 5. Section 71-3-1117, MCA, is amended to read:

15 "71-3-1117. Liability for failure to recognize lien.

16 If any insurer or person, after receiving notice of lien,
 17 makes payment on account of injury, disease, or death and
 18 the amount of the lien claimed by any physician, nurse,
 19 physical therapist, occupational therapist, or hospital has
 20 not been paid, the insurer or person is liable to the
 21 physician, nurse, physical therapist, occupational
 22 therapist, or hospital for the reasonable value of the
 23 services."

24 Section 6. Section 71-3-1118, MCA, is amended to read:

25 "71-3-1118. Applicability. (1) Except as provided in

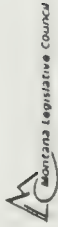
1 subsection (2), this part does not apply to compensation
 2 awarded to workers for injury, disease, or death pursuant to
 3 the Workers' Compensation Act or the Occupational Disease
 4 Act of Montana.

5 (2) This part applies to all payments awarded for
 6 medical, therapy, and hospital services pursuant to the acts
 7 referred to in subsection (1).

8 (3) This part does not apply to any benefits payable
 9 under a policy of life insurance or group life insurance, a
 10 contract of disability insurance, or an annuity contract or
 11 to pension benefits payable under a qualified pension plan."

1 BILL NO. _____
2 INTRODUCED BY _____
3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
4 ON LIEN LAWS
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
7 31-2-106, MCA, TO INCLUDE AS EXEMPT PROPERTY IN A BANKRUPTCY
8 PROCEEDING ALL PROPERTY OF AN INDIVIDUAL DEBTOR EXEMPT FROM
9 EXECUTION OF JUDGMENT AS PROVIDED IN THE MONTANA CODE
10 ANNOTATED."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 Section 1. Section 31-2-106, MCA, is amended to read:
14 "31-2-106. Exempt property -- bankruptcy proceeding.
15 No individual may exempt from the property of the estate in
16 any bankruptcy proceeding the property specified in 11
17 U.S.C. 522(d) except property exempt from execution of
18 judgment as provided in 19-3-105, 19-4-706, 19-5-704,
19 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504,
20 19-11-612, 19-13-1004, Title 25, chapter 13, part 6,
21 33-7-511, 33-15-512 through 33-15-514, 35-10-502,
22 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title
23 70, chapter 32, and 80-2-245."

-End-



BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE JOINT INTERIM

SUBCOMMITTEE ON LIEN LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT A FINANCING STATEMENT COVERING EQUIPMENT USED IN FARMING OPERATIONS IDENTIFY THE COLLATERAL BY MODEL AND SERIAL NUMBERS; AMENDING SECTION 30-9-402, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-9-402, MCA, is amended to read:

"30-9-402. Formal requisites of financing statement -- amendments -- mortgage as financing statement. (1) (a) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types or describing the items of collateral.

(b) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

(c) Except for financing statements filed pursuant to

30-9-409 when the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned.

(d) When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or when the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5).

(e) When the financing statement covers equipment used in farming operations, the statement must also contain the model and serial numbers of the item of collateral if such numbers are assigned to the item.

(f) A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was

1 changed to this state under such circumstances.

2 (b) proceeds under 30-9-306 if the security interest
3 in the original collateral was perfected. Such a financing
4 statement must describe the original collateral.

5 (c) collateral as to which the filing has lapsed; or
6 (d) collateral acquired after a change of name,
7 identity, or corporate structure of the debtor (subsection
8 (7)).

9 (3) A form substantially as follows is sufficient to
10 comply with subsection (1):

11 Name of debtor (or assignor)

12 Address

13 Name of secured party (or assignee)

14 Address

15 1. This financing statement covers the following types
16 (or items) of property:

17 (Describe)

18 2. (If collateral is crops) The above described crops
19 are growing or are to be grown on:

20 (Describe Real Estate) ...

21 3. (If applicable) The above goods are to become
22 fixtures on:

23 (Describe Real Estate)

24 and this financing statement is to be filed in the real
25 estate record. (If the debtor does not have an interest or

1 record) The name of a record owner is

2 4. (If products of collateral are claimed) Products of
3 the collateral are also covered.

4 5. (If collateral is equipment used in farming
5 operations) The model and serial numbers of the above
6 described equipment are:
7 (List Numbers)

8 (Use whichever Signature of Debtor (or Assignor)
9 is applicable) Signature of Secured Party (or Assignee)
10 (4) A financing statement may be amended by filing a
11 writing signed by both the debtor and the secured party. An
12 amendment does not extend the period of effectiveness of a
13 financing statement. If any amendment adds collateral, it is
14 effective as to the added collateral only from the filing
15 date of the amendment. In this chapter, unless the context
16 otherwise requires, the term "financing statement" means the
17 original financing statement and any amendments.

18 (5) A financing statement covering timber to be cut or
19 covering minerals or the like (including oil and gas) or
20 accounts subject to 30-9-103(5), or a financing statement
21 filed as a fixture filing (30-9-313) when the debtor is not
22 a transmitting utility, must show that it covers this type
23 of collateral, must recite that it is to be filed in the
24 real estate records, and the financing statement must
25 contain a description of the real estate sufficient if it

1 were contained in a mortgage of the real estate to give
 2 constructive notice of the mortgage under the law of this
 3 state. If the debtor does not have an interest of record in
 4 the real estate, the financing statement must show the name
 5 of a record owner.

6 (6) (a) A mortgage is effective as a financing
 7 statement filed as a fixture filing from the date of its
 8 recording if:

9 (i) the goods are described in the mortgage by item or
 10 type;

11 (ii) the goods are or are to become fixtures related to
 12 the real estate described in the mortgage;

13 (iii) the mortgage complies with the requirements for a
 14 financing statement in this section other than a recital
 15 that it is to be filed in the real estate records; and

16 (iv) the mortgage is duly recorded.

17 (b) No fee with reference to the financing statement
 18 is required other than the regular recording and
 19 satisfaction fees with respect to the mortgage.

20 (7) A financing statement sufficiently shows the name
 21 of the debtor if it gives the individual, partnership, or
 22 corporate name of the debtor, whether or not it adds other
 23 trade names or the names of partners. If the debtor so
 24 changes his name or in the case of an organization its name,
 25 identity, or corporate structure that a filed financing

1 statement becomes seriously misleading, the filing is not
 2 effective to perfect a security interest in collateral
 3 acquired by the debtor more than 4 months after the change
 4 unless a new appropriate financing statement is filed before
 5 the expiration of that time. A filed financing statement
 6 remains effective with respect to collateral transferred by
 7 the debtor even though the secured party knows of or
 8 consents to the transfer.

9 (8) A financing statement substantially complying with
 10 the requirements of this section is effective even though it
 11 contains minor errors which are not seriously misleading."
 12 NEW SECTION. Section 2. Applicability. This act
 13 applies to any financing statement filed after September 30,
 14 1987.

15 NEW SECTION. Section 3. Extension of authority. Any
 16 existing authority of the secretary of state to make rules
 17 on the subject of the provisions of this act is extended to
 18 the provisions of this act.

-End-

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE INTERIM SUBCOMMITTEE ON LIEN LAWS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
6 REVISION OF LAWS RELATING TO PROPERTY EXEMPT FROM EXECUTION;
7 AMENDING SECTIONS 25-13-614, 70-32-104, 70-32-213,
8 70-32-214, 72-2-102, 72-2-205, 72-2-704, 72-2-705, 72-2-801
9 THROUGH 72-2-804, 72-3-101, 72-3-911, 72-3-1103, AND
10 72-3-1104, MCA; AND REPEALING SECTIONS 25-13-611 THROUGH
11 25-13-613, 25-13-616, AND 25-13-617, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 NEW SECTION. Section 1. Protection of property of
15 residents. A resident of this state is entitled to the
16 exemptions provided in this part.

17 NEW SECTION. Section 2. Claim enforceable against
18 exempt property. Notwithstanding any other provision of this
19 part, a creditor may levy against exempt property to enforce
20 a claim for:

21 (1) the purchase price of the property; or

22 (2) a loan made for the express purpose of enabling
23 the judgment debtor to purchase the property and used for
24 that purpose.

25 NEW SECTION. Section 3. Property exempt without

1 limitation. A judgment debtor is entitled to exemption from
2 execution of the following:

3 (1) professionally prescribed health aids for the
4 judgment debtor or a dependent of the judgment debtor;

5 (2) benefits the judgment debtor has received or is
6 entitled to receive under federal social security or local
7 public assistance legislation;

8 (3) veterans' benefits;

9 (4) disability or illness benefits;

10 (5) benefits paid or payable for medical, surgical, or
11 hospital care to the extent they are used or will be used to
12 pay for the care;

13 (6) maintenance and child support; and

14 (7) a burial plot for the judgment debtor and his
15 family.

16 NEW SECTION. Section 4. Personal property exempt
17 subject to value limitations. A judgment debtor is entitled
18 to exemption from execution of the following:

19 (1) the judgment debtor's interest, not to exceed
20 \$6,000 in aggregate value, to the extent of a value not
21 exceeding \$600 in any item of property, household
22 furnishings and goods, appliances, jewelry, wearing apparel,
23 books, animals, crops, and musical instruments;

24 (2) the judgment debtor's interest, not to exceed
25 \$3,500 in value, in one motor vehicle;

1 (3) the judgment debtor's interest, not to exceed
 2 \$3,000 in value, in any implements, professional books, or
 3 tools, of the trade of the judgment debtor or a dependent of
 4 the judgment debtor; and

5 (4) the judgment debtor's interest, not to exceed
 6 \$4,000 in value, in any unmaturred life insurance contracts
 7 owned by him.

8 NEW SECTION. Section 5. Tracing exempt personal
 9 property. (1) If money or other property exempt under
 10 [sections 3 and 4] has been sold or has been lost, damaged,
 11 or destroyed and the judgment debtor has been indemnified
 12 for it, he is entitled for 6 months to an exemption of
 13 proceeds that are traceable (for example, in a bank or
 14 savings account).

15 (2) Earnings exempt under 25-13-614 remain exempt for
 16 45 days after receipt by and while in the possession of the
 17 judgment debtor in a form into which the exempt earnings are
 18 traceable (for example, in a bank or savings account).

19 (3) Proceeds are traceable under this section by
 20 application of the principles of first-in first-out, last-in
 21 first-out, or any other reasonable basis for tracing
 22 selected by the judgment debtor.

23 NEW SECTION. Section 6. Tracing homestead proceeds.

24 (1) If property or a part thereof that could have been
 25 claimed as an exempt homestead has been sold or taken by

1 condemnation or has been lost, damaged, or destroyed and the
 2 owner has been indemnified for it, he is entitled for 18
 3 months to exemption of the proceeds that are traceable.

4 (2) Proceeds are traceable under this section by
 5 application of the principles of first-in first-out, last-in
 6 first-out, or any other reasonable basis for tracing
 7 selected by the judgment debtor.

8 Section 7. Section 25-13-614, MCA, is amended to read:
 9 "25-13-614. Earnings of judgment debtor. (1) Except as
 10 provided in subsection (2), the earnings of the judgment
 11 debtor for his personal services rendered during the 45-day
 12 period prior to the levy of execution or attachment are
 13 exempt to the extent such earnings are necessary for the
 14 support of his family;

15 (2) No earnings are exempt unless the judgment
 16 debtor complies with 25-13-411.

17 (b) Earnings are exempt under this section from
 18 judgments or orders for maintenance or child support only to
 19 the extent allowed by 15-6-507-1673.

20 (c) One-half of earnings are not exempt for debts
 21 incurred by the judgment debtor or his family for gasoline
 22 and the common necessities of life

23 (3) The words "his family", as used in this section,
 24 except to the extent that these words include a person
 25 covered by a judgment or order under subsection (2), are to

1 be construed to include:
 2 (a) the judgment debtor's spouse;
 3 (b) every person who resides with the judgment debtor
 4 under his care or maintenance and who is;
 5 (i) a minor child of the judgment debtor or of his
 6 spouse or former spouse;
 7 (ii) a minor grandchild, brother, or sister or minor
 8 child of a brother or sister of the judgment debtor or of
 9 his spouse;
 10 (iii) a father, mother, grandfather, or grandmother of
 11 the judgment debtor or of his spouse or former spouse;
 12 (iv) an unmarried sister, brother, or any other
 13 relative of the judgment debtor mentioned in this section
 14 who has attained the age of majority and is unable to care
 15 for or support himself.

16 (2) Except as provided in subsections (3) and (4), the
 17 maximum part of the aggregate disposable earnings of a
 18 judgment debtor for any workweek that is subjected to
 19 garnishment may not exceed the lesser of:

20 (a) the amount by which his disposable earnings for
 21 the week exceed 30 times the federal minimum hourly wage in
 22 effect at the time the earnings are payable; or
 23 (b) 25% of his disposable earnings for that week.

24 (3) The restrictions of subsection (2) do not apply in
 25 the case of an order or judgment for the maintenance or

1 support of any person, issued by a court of competent
 2 jurisdiction, or pursuant to an administrative procedure
 3 that is established by state law, affords substantial due
 4 process, and is subject to judicial review.

5 (4) (a) The maximum part of the aggregate disposable
 6 earnings of a judgment debtor for any workweek that is
 7 subject to garnishment to enforce an order described in
 8 subsection (3) may not exceed:

9 (i) 50% of the judgment debtor's disposable earnings
 10 for that week if he is supporting his spouse or dependent
 11 child (other than a spouse or child for whom the order is
 12 issued); or

13 (ii) 60% of the judgment debtor's disposable earnings
 14 for that week if he is not supporting a spouse or dependent
 15 child described in subsection (4)(a)(i).

16 (b) However, the amount stated in (4)(a)(i) may be 55%
 17 and the amount stated in (4)(a)(ii) may be 65% if such
 18 earnings are being garnished to enforce an order for
 19 maintenance or support for a period prior to the 12-week
 20 period that ends with the beginning of such workweek.

21 (5) For the purposes of this section, the definitions
 22 of earnings, disposable earnings, and garnishment are as set
 23 forth in 15 U.S.C. 1672."

24 Section 8. Section 70-32-104, MCA, is amended to read:
 25 "70-32-104. Limitations on quantity--and

1 value which may be selected. (1) Homesteads may be selected
 2 and claimed consisting of:
 3 (a) a quantity of land not exceeding 320 acres used
 4 for agricultural purposes and the dwelling house or mobile
 5 home thereon and its appurtenances and not included in any
 6 municipality;
 7 (b) a quantity of land not in a municipality, not
 8 exceeding 1 acre and not used for agricultural or commercial
 9 purposes, and the dwelling house or mobile home thereon and
 10 its appurtenances; or
 11 (c) a quantity of land within a municipality, not
 12 exceeding one-fourth of an acre, and the dwelling house or
 13 mobile home thereon and its appurtenances;
 14 (2) Such a homestead, in either case, shall may not
 15 exceed in value the sum of \$40,000. However, in any
 16 proceedings instituted to determine the value of such
 17 homestead, the assessed value of the land with included
 18 appurtenances, if any, and of the dwelling house as appears
 19 on the last completed assessment roll preceding the
 20 institution of such proceedings shall be prima facie
 21 evidence of the value of the property claimed as a
 22 homestead.

23 (2) If a claimant who is an owner of an undivided
 24 interest in real property claims a homestead exemption, he
 25 is limited to an exemption amount proportional to his

1 undivided interest."

2 Section 9. Section 70-32-213, MCA, is amended to read:
 3 "70-32-213. Sale proceeds equal to exemption
 4 protected. The money paid to the claimant is entitled, for
 5 the period of 6 18 months thereafter, to the same protection
 6 against legal process and the voluntary disposition of
 7 either spouse which the law gives to the homestead."

8 Section 10. Section 70-32-214, MCA, is amended to
 9 read:

10 "70-32-214. Compensation of appraisers. The court must
 11 fix the a reasonable amount as compensation of for the
 12 appraisers, not to exceed \$3--per--day--each--for--the--time
 13 actually engaged."

14 Section 11. Section 72-2-102, MCA, is amended to read:
 15 "72-2-102. Waiver of rights by spouse. The right of
 16 election of a surviving spouse and the rights of the
 17 surviving spouse to the homestead allowance, exempt
 18 property, and family allowance or any of them may be waived,
 19 wholly or partially, before or after marriage, by a written
 20 contract, agreement, or waiver signed by the party waiving
 21 after fair disclosure. Unless it provides to the contrary,
 22 a waiver of "all rights" (or equivalent language) in the
 23 property or estate of a present or prospective spouse or a
 24 complete property settlement entered into after or in
 25 anticipation of separation or divorce is a waiver of all

1 rights to elective share, homestead allowance, exempt
 2 property, and family allowance by each spouse in the
 3 property of the other and a renunciation by each of all
 4 benefits which would otherwise pass to him from the other by
 5 intestate succession or by virtue of the provisions of any
 6 will executed before the waiver or property settlement."

7 Section 12. Section 72-2-205, MCA, is amended to read:
 8 "72-2-205. Requirement that heir survive decedent by
 9 one hundred twenty hours. Any person who fails to survive
 10 the decedent by 120 hours is deemed to have predeceased the
 11 decedent for purposes of homestead allowance, exempt
 12 property, and intestate succession, and the decedent's heirs
 13 are determined accordingly. If the time of death of the
 14 decedent or of the person who would otherwise be an heir or
 15 the times of death of both cannot be determined and it
 16 cannot be established that the person who would otherwise be
 17 an heir has survived the decedent by 120 hours, it is deemed
 18 that the person failed to survive for the required period.
 19 This section is not to be applied where its application
 20 would result in a taking of intestate estate by the state
 21 under 72-2-207."

22 Section 13. Section 72-2-704, MCA, is amended to read:
 23 "72-2-704. Effect of election on benefits by will or
 24 statute. (1) The surviving spouse's election of his elective
 25 share does not affect the share of the surviving spouse

1 under the provisions of the decedent's will or intestate
 2 succession unless the surviving spouse also expressly
 3 renounces in the petition for an elective share the benefit
 4 of all or any of the provisions. If any provision is so
 5 renounced, the property or other benefit which would
 6 otherwise have passed to the surviving spouse thereunder is
 7 treated, subject to contribution under 72-2-706(2), as if
 8 the surviving spouse had predeceased the testator.

9 (2) A surviving spouse is entitled to homestead
 10 allowance, exempt property, and family allowance whether or
 11 not he elects to take an elective share."

12 Section 14. Section 72-2-705, MCA, is amended to read:
 13 "72-2-705. Augmented estate. The augmented estate
 14 means the estate, reduced by funeral and administration
 15 expenses, homestead allowance, family allowances and
 16 exemptions, and enforceable claims, to which is added the
 17 sum of the following amounts:

18 (1) the value of property transferred to anyone other
 19 than a bona fide purchaser by the decedent at any time
 20 during marriage, to or for the benefit of any person other
 21 than the surviving spouse, to the extent that the decedent
 22 did not receive adequate and full consideration in money or
 23 money's worth for the transfer, if the transfer is of any of
 24 the following types:

25 (a) any transfer under which the decedent retained at

1 the time of his death the possession or enjoyment of or
2 right to income from the property;

3 (b) any transfer to the extent that the decedent
4 retained at the time of his death a power, either alone or
5 in conjunction with any other person, to revoke or to
6 consume, invade, or dispose of the principal for his own
7 benefit;

8 (c) any transfer whereby property is held at the time
9 of decedent's death by decedent and another with right of
10 survivorship;

11 (d) any transfer made to a donee within 2 years of
12 death of the decedent to the extent that the aggregate
13 transfers to any one donee in any of the years exceed
14 \$3,000;

15 (2) any transfer is excluded if made with the written
16 consent or joinder of the surviving spouse. Property is
17 valued as of the decedent's death except that property given
18 irrevocably to a donee during lifetime of the decedent is
19 valued as of the date the donee came into possession or
20 enjoyment if that occurs first. Nothing herein shall cause
21 to be included in the augmented estate any life insurance,
22 accident insurance, joint annuity, or pension payable to a
23 person other than the surviving spouse.

24 (3) the value of property owned by the surviving
25 spouse at the decedent's death, plus the value of property

1 transferred by the spouse at any time during marriage to any
2 person other than the decedent which would have been
3 includable in the spouse's augmented estate if the surviving
4 spouse had predeceased the decedent, to the extent the owned
5 or transferred property is derived from the decedent by any
6 means other than testate or intestate succession without a
7 full consideration in money or money's worth. For purposes
8 of this subsection:

9 (a) property derived from the decedent includes but is
10 not limited to any beneficial interest of the surviving
11 spouse in a trust created by the decedent during his
12 lifetime, any property appointed to the spouse by the
13 decedent's exercise of a general or special power of
14 appointment also exercisable in favor of others than the
15 spouse, any proceeds of insurance (including accidental
16 death benefits) on the life of the decedent attributable to
17 premiums paid by him, any lump sum immediately payable and
18 the commuted value of the proceeds of annuity contracts
19 under which the decedent was the primary annuitant
20 attributable to premiums paid by him, the commuted value of
21 amounts payable after the decedent's death under any public
22 or private pension, disability compensation, death benefit,
23 or retirement plan, exclusive of the federal social security
24 system, by reason of service performed or disabilities
25 incurred by the decedent, any property held at the time of

1 decedent's death by decedent and the surviving spouse with
 2 right of survivorship, any property held by decedent and
 3 transferred by contract to the surviving spouse by reason of
 4 the decedent's death, and the value of the share of the
 5 surviving spouse resulting from rights in community property
 6 in this or any other state formerly owned with the decedent.
 7 Premiums paid by the decedent's employer, his partner, a
 8 partnership of which he was a member, or his creditors are
 9 deemed to have been paid by the decedent.

10 (b) property owned by the spouse at the decedent's
 11 death is valued as of the date of death. Property
 12 transferred by the spouse is valued at the time the transfer
 13 became irrevocable or at the decedent's death, whichever
 14 occurred first. Income earned by included property prior to
 15 the decedent's death is not treated as property derived from
 16 the decedent.

17 (c) property owned by the surviving spouse as of the
 18 decedent's death or previously transferred by the surviving
 19 spouse is presumed to have been derived from the decedent,
 20 except to the extent that the surviving spouse establishes
 21 that it was derived from another source.

22 (4) For the purposes of this section, a bona fide
 23 purchaser is a purchaser for value in good faith and without
 24 notice of any adverse claim. Any recorded instrument is
 25 prima facie evidence that the transfer described therein was

1 made to a bona fide purchaser."

2 Section 15. Section 72-2-801, MCA, is amended to read:
 3 "72-2-801. Homestead allowance. (1) A surviving spouse
 4 of a decedent who was domiciled in this state is entitled to
 5 a homestead allowance of \$20,000; if there is no surviving
 6 spouse, each minor child and each dependent child of the
 7 decedent is entitled to a homestead allowance amounting to
 8 \$20,000; divided by the number of minor and dependent
 9 children of the decedent.

10 (1) (a) The personal representative may exercise the
 11 right to claim a homestead on behalf of a surviving spouse.
 12 If there is no surviving spouse, the personal representative
 13 may exercise the right on behalf of any minor child and any
 14 dependent child of the decedent, divided by the number of
 15 minor and dependent children of the decedent.

16 (b) (i) The homestead consists of the dwelling house
 17 or mobile home, and all appurtenances, in which the decedent
 18 resided and the land, if any, on which the residence is
 19 located.

20 (ii) The homestead may not exceed in value \$40,000. In
 21 any proceedings instituted to determine the value of such
 22 homestead, the assessed value of the land with included
 23 appurtenances, if any, and of the dwelling house as appears
 24 on the last completed assessment roll preceding the
 25 institution of such proceedings is be prima facie evidence

1 of the value of the property claimed as a homestead.

2 (2) The homestead ~~allowance-is--exempt--from--and~~ has
3 priority over all claims against the estate and is exempt
4 from execution as provided in Title 70, chapter 32, part 2.

5 (3) ~~Homestead--allowance~~ The homestead is in addition
6 to any share passing to the surviving spouse or minor or
7 dependent child by the will of the decedent unless otherwise
8 provided, by intestate succession, or by way of elective
9 share."

10 Section 16. Section 72-2-802, MCA, is amended to read:

11 "72-2-802. Exempt property. (1) In addition to the
12 homestead ~~allowance~~, the surviving spouse of a decedent who
13 was domiciled in this state is entitled from the estate to
14 value not exceeding \$3,500 in excess of any security
15 interests therein in household furniture, automobiles,
16 furnishings, appliances, and personal effects. If there is
17 no surviving spouse, children of the decedent are entitled
18 jointly to the same value. If encumbered chattels are
19 selected and if the value in excess of security interests,
20 plus that of other exempt property, is less than \$3,500 or
21 if there is not \$3,500 worth of exempt property in the
22 estate, the spouse or children are entitled to other assets
23 of the estate, if any, to the extent necessary to make up
24 the \$3,500 value.

25 (2) Rights to exempt property and assets needed to

1 make up a deficiency of exempt property have priority over
2 all claims against the estate, except that the right to any
3 assets to make up a deficiency of exempt property shall
4 abate as necessary to permit prior payment of the homestead
5 ~~allowance~~ and family allowance.

6 (3) These rights are in addition to any benefit or
7 share passing to the surviving spouse or children by the
8 will of the decedent unless otherwise provided, by intestate
9 succession, or by way of elective share."

10 Section 17. Section 72-2-803, MCA, is amended to read:

11 "72-2-803. Family allowance. (1) In addition to the
12 right to a homestead ~~allowance~~ and exempt property, if the
13 decedent was domiciled in this state, the surviving spouse
14 and minor children whom the decedent was obligated to
15 support and children who were in fact being supported by him
16 are entitled to a reasonable allowance in money out of the
17 estate for their maintenance during the period of
18 administration, which allowance may not continue for longer
19 than 1 year if the estate is inadequate to discharge allowed
20 claims. The allowance may be paid as a lump sum or in
21 periodic installments.

22 (2) It is payable to the surviving spouse, if living,
23 for the use of the surviving spouse and minor and dependent
24 children, otherwise to the children or persons having their
25 care and custody; but in case any minor child or dependent

1 child is not living with the surviving spouse, the allowance
 2 may be made partially to the child or his guardian or other
 3 person having his care and custody and partially to the
 4 spouse, as their needs may appear.

5 (3) The family allowance is exempt from and has
 6 priority over all claims but not over the homestead
 7 allowance.

8 (4) The family allowance is not chargeable against any
 9 benefit or share passing to the surviving spouse or children
 10 by the will of the decedent unless otherwise provided, by
 11 intestate succession, or by way of elective share.

12 (5) The death of any person entitled to family
 13 allowance terminates his right to allowances not yet paid."

14 Section 18. Section 72-2-804, MCA, is amended to read:
 15 "72-2-804. Source, determination, and documentation.

16 (1) If the estate is otherwise sufficient, property
 17 specifically devised is not used to satisfy rights to
 18 homestead and exempt property. Subject to this restriction,
 19 the surviving spouse, the guardians of the minor children,
 20 or children who are adults may select property of the estate
 21 as the homestead allowance and exempt property. The personal
 22 representative may make these selections if the surviving
 23 spouse, the children, or the guardians of the minor children
 24 are unable or fail to do so within a reasonable time or if
 25 there are no guardians of the minor children. The personal

1 representative may execute an instrument or deed of
 2 distribution to establish the ownership of property taken as
 3 the homestead allowance or exempt property. He may determine
 4 the family allowance in a lump sum not exceeding \$6,000 or
 5 periodic installments not exceeding \$500 per month for 1
 6 year and may disburse funds of the estate in payment of the
 7 family allowance and--any--part-of-the-homestead-allowance
 8 payable-in-cash.

9 (2) The personal representative or any interested
 10 person aggrieved by any selection, determination, payment,
 11 proposed payment, or failure to act under this section may
 12 petition the court for appropriate relief, which relief may
 13 provide a family allowance larger or smaller than that which
 14 the personal representative determined or could have
 15 determined."

16 Section 19. Section 72-3-101, MCA, is amended to read:

17 "72-3-101. Devolution of estate at death --
 18 restrictions. (1) The power of a person to leave property by
 19 will and the rights of creditors, devisees, and heirs to his
 20 property are subject to the restrictions and limitations
 21 contained in this code to facilitate the prompt settlement
 22 of estates.

23 (2) Upon the death of a person, his real and personal
 24 property devolves to the persons to whom it is devised by
 25 his last will or to those indicated as substitutes for them

1 in cases involving lapse, renunciation, or other
 2 circumstances affecting the devolution of testate estates
 3 or, in the absence of testamentary disposition, to his heirs
 4 or to those indicated as substitutes for them in cases
 5 involving renunciation or other circumstances affecting
 6 devolution of intestate estates, subject to the homestead
 7 allowance, exempt property, and family allowance, to rights
 8 of creditors, elective share of the surviving spouse, and to
 9 administration."

10 Section 20. Section 72-3-911, MCA, is amended to read:
 11 "72-3-911. Successors' rights if no administration.
 12 (1) In the absence of administration, the heirs and devisees
 13 are entitled to the estate in accordance with the terms of a
 14 probated will or the laws of intestate succession.

15 (2) Devisees may establish title by the probated will
 16 to devised property. Persons entitled to property by
 17 homestead allowance, exemption, or intestacy may establish
 18 title thereto by proof of the decedent's ownership, his
 19 death, and their relationship to the decedent.

20 (3) Successors take subject to all charges incident to
 21 administration, including the claims of creditors and
 22 allowances of surviving spouse and dependent children and
 23 subject to the rights of others resulting from abatement,
 24 retainer, advancement, and ademption."

25 Section 21. Section 72-3-1103, MCA, is amended to

1 read:

2 "72-3-1103. Summary procedure for disbursement and
 3 distribution. If it appears from the inventory and appraisal
 4 that the value of the net distributable estate does not
 5 exceed \$7,500 or the value of the entire estate, less liens
 6 and encumbrances, does not exceed the homestead allowance,
 7 exempt property, family allowance, costs and expenses of
 8 administration, reasonable funeral expenses, and reasonable
 9 and necessary medical and hospital expenses of the last
 10 illness of the decedent, the personal representative,
 11 without giving notice to creditors, may immediately disburse
 12 and distribute the estate to the persons entitled thereto
 13 and file a closing statement as provided in 72-3-1104."

14 Section 22. Section 72-3-1104, MCA, is amended to
 15 read:

16 "72-3-1104. Closing by sworn statement of personal
 17 representative -- termination of appointment. (1) Unless
 18 prohibited by order of the court and except for estates
 19 being administered by supervised personal representatives, a
 20 personal representative may close an estate administered
 21 under the summary procedures of 72-3-1103 by filing with the
 22 court, at any time after disbursement and distribution of
 23 the estate, a verified statement stating that:

24 (a) to the best knowledge of the personal
 25 representative, the value of the net distributable estate

1 did not exceed \$7,500 or the value of the entire estate,
 2 less liens and encumbrances, did not exceed the homestead
 3 allowance, exempt property, family allowance, costs and
 4 expenses of administration, reasonable funeral expenses, and
 5 reasonable, necessary medical and hospital expenses of the
 6 last illness of the decedent;

7 (b) the personal representative has fully administered
 8 the estate by payment of inheritance taxes and by disbursing
 9 and distributing it to the persons entitled thereto; and
 10 (c) the personal representative has sent a copy of the
 11 closing statement to all distributees of the estate and to
 12 all creditors or other claimants of whom he is aware whose
 13 claims are neither paid nor barred and has furnished a full
 14 account in writing of his administration to the distributees
 15 whose interests are affected.

16 (2) If no actions or proceedings involving the
 17 personal representative are pending in the court 1 year
 18 after the closing statement is filed, the appointment of the
 19 personal representative terminates.

20 (3) A closing statement filed under this section has
 21 the same effect as one filed under 72-3-1004."

22 NEW SECTION. Section 23. Repealer. Sections 25-13-611
 23 through 25-13-613, 25-13-616, and 25-13-617, MCA, are
 24 repealed.

25 NEW SECTION. Section 24. Codification instruction.

1 (1) Sections 1 through 5 are intended to be codified as an
 2 integral part of Title 25, chapter 13, part 6, and the
 3 provisions of Title 25, chapter 13, part 6, apply to
 4 sections 1 through 5.

5 (2) Section 6 is intended to be codified as an
 6 integral part of Title 70, chapter 32, part 2, and the
 7 provisions of Title 70, chapter 32, part 2, apply to section
 8 6.

9 NEW SECTION. Section 25. Saving clause. This act does
 10 not affect rights and duties that matured, penalties that
 11 were incurred, or proceedings that were begun before the
 12 effective date of this act.

13 NEW SECTION. Section 26. Severability. If a part of
 14 this act is invalid, all valid parts that are severable from
 15 the invalid part remain in effect. If a part of this act is
 16 invalid in one or more of its applications, the part remains
 17 in effect in all valid applications that are severable from
 18 the invalid applications.

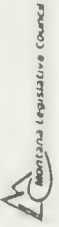
-End-

1
2 INTRODUCED BY _____ BILL NO. _____
3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS RELATING TO MECHANICS' LIENS; AMENDING SECTIONS
7 70-23-607, 70-23-608, 71-3-512, AND 71-3-516, MCA; REPEALING
8 SECTIONS 71-3-501 THROUGH 71-3-503, 71-3-511, AND 71-3-514,
9 MCA; AND PROVIDING AN APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Scope. This part creates and
13 provides for the attachment and enforceability of a
14 construction lien against real estate in favor of a person
15 furnishing services or materials under a real estate
16 improvement contract. A nonconsensual lien against real
17 estate for improvements made thereon may not arise except as
18 provided in this part.

19 NEW SECTION. Section 2. Definitions. (1)
20 "Commencement of work" means the date of the first visible
21 change in the physical condition of the real estate caused
22 by the first person furnishing services or materials
23 pursuant to a particular real estate improvement contract.
24 (2) "Construction lien" or "lien" means a lien against
25 real estate arising under this part.



1 (3) (a) "Contracting owner" means a person who owns an
2 interest in real estate and who, personally or through an
3 agent, enters into an express or implied contract for the
4 improvement of the real estate.
5 (b) For the purpose of determining whether a person is
6 a contracting owner, agency is presumed, in the absence of
7 clear and convincing evidence to the contrary:
8 (i) between employer and employee;
9 (ii) between spouses;
10 (iii) between joint tenants; and
11 (iv) among tenants in common.

12 (4) (a) "Contract price" means the amount agreed upon
13 by the contracting parties for performing services and
14 furnishing materials covered by the contract, increased or
15 diminished by:

16 (i) the price of change orders or extras;
17 (ii) any amounts attributable to altered
18 specifications; or

19 (iii) a breach of contract, including but not limited
20 to defects in workmanship or materials.

21 (b) If no price is agreed upon by the contracting
22 parties, the contract price means the reasonable value of
23 all services or materials covered by the contract.

24 (5) (a) "Real estate improvement contract" means an
25 agreement to perform services, including labor, or to

1 furnish materials for the purpose of producing a change in
2 the physical condition of the real estate, including:

3 (i) alteration of the surface by excavation, fill,
4 change in grade, or change in a shore, bank, or flood plain
5 of a stream, swamp, or body of water;

6 (ii) construction or installation on, above, or below
7 the surface of land;

8 (iii) demolition, repair, remodeling, or removal of a
9 structure previously constructed or installed;

10 (iv) seeding, sodding, or other landscape operation;

11 (v) surface or subsurface testing, boring, or
12 analysis; and

13 (vi) preparation of plans, surveys, or architectural or
14 engineering plans or drawings for any change in the physical
15 condition of the real estate, regardless of whether they are
16 used to produce a change in the physical condition of the
17 real estate.

18 (b) For the purpose of claiming a construction lien, a
19 real estate improvement contract does not include:

20 (i) a contract for the mining or removal of timber,
21 minerals, gravel, soil, sod, or things growing on the land
22 or a similar contract in which the activity is primarily for
23 the purpose of making the materials available for sale or
24 use; or

25 (ii) a contract for the planting, cultivation, or

1 harvesting of crops or for the preparation of the soil for
2 planting of crops.

3 NEW SECTION. Section 3. Who may claim a construction
4 lien -- limitation. A person who furnishes services or
5 materials pursuant to a real estate improvement contract may
6 claim a construction lien, only to the extent provided in
7 this part, to secure the payment of his contract price.

8 NEW SECTION. Section 4. Limitation of lien for
9 materials supplied. (1) A lien for furnishing materials
10 arises only if:

11 (a) (i) the materials are supplied with the intent
12 that they be used in the course of construction of or
13 incorporated into the improvement in connection with which
14 the lien arises; and

15 (ii) the intent described in subsection (1)(a)(i) can
16 be shown by a contract of sale, a delivery order, delivery
17 to the site by the lien claimant or at his direction, or by
18 other evidence; and

19 (b) the materials are:

20 (i) incorporated in the improvement or consumed as
21 normal wastage in construction operations;

22 (ii) specifically fabricated for incorporation into the
23 improvement and not readily resalable in the ordinary course
24 of the fabricator's business, even though the materials are
25 not actually incorporated into the improvement;

(iii) used for the construction or operation of machinery or equipment used in the course of construction and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(iv) tools, appliances, or machinery used on the particular improvement. However, a lien for supplying tools, appliances, or machinery used on the improvement is limited as provided by subsection (3).

(2) The delivery of materials to the site of the improvement, whether by the lien claimant or by another, creates a presumption that they were used in the course of construction or were incorporated into the improvement.

(3) A lien arising for the supplying of tools, appliances, or machinery under subsection (1)(b)(iv) is limited as follows:

(a) if they are rented, the lien is for the reasonable rental value for the period of actual use, including any reasonable periods of nonuse provided for in the rental contract; and

(b) if they are purchased, the lien is for the price but arises only if they were purchased for use in the course of the particular improvement and have no substantial value after the completion of the improvement on which they were used.

NEW SECTION. Section 5. Extent of lien. (1) A

construction lien extends to the interest of the contracting owner in the real estate, as the interest exists at the commencement of work or is thereafter acquired in the real estate, subject to the provisions of this section.

(2) (a) If an improvement is located wholly on one or more platted lots belonging to the contracting owner, the lien applies to the improvement and to the lots on which the improvement is located.

(b) If an improvement is not located wholly on one or more platted lots, the lien applies to the improvement and to the smallest identifiable tract or parcel of land on which the improvement is located.

(3) If the improvement is to leased premises, the lien attaches to the improvement and to the leasehold term. Except as provided in subsection (4), it does not attach to the lessor's interest unless he contracted for or agreed to the improvement before it was begun.

(4) (a) A construction lien is not impaired to the extent of the value of the work or improvement that is severable from the real estate if the improvement is to premises held by:

(i) a contracting owner who owns less than a fee simple interest; or

(ii) a lessee and the lease is forfeited by the lessee.

(b) If the work or improvement may be removed without

1 harm to the rest of the real estate, the lienholder may have
 2 the value determined, the work or improvement sold
 3 separately, and the proceeds delivered to him to satisfy the
 4 construction lien. The purchaser shall remove the work or
 5 improvement within 45 days of the sale.

6 (5) If a contracting owner contracts for improvements
 7 on real estate not owned by him as part of an improvement on
 8 his real estate or for the purpose of directly benefitting
 9 his real estate, there is a lien against the contracting
 10 owner's real estate being improved or directly benefitted in
 11 favor of persons furnishing services or materials to the
 12 same extent as if the improvement had been on the
 13 contracting owner's real estate.

14 NEW SECTION. Section 6. Amount of lien. (1) A person
 15 who has furnished services or materials pursuant to a real
 16 estate improvement contract is entitled to a lien for the
 17 unpaid part of his contract price, subject to the provisions
 18 of [section 4].

19 (2) A person's lien is reduced by the sum of the liens
 20 of persons claiming construction liens through him.

21 NEW SECTION. Section 7. Notice of right to claim a
 22 lien required -- exceptions. (1) The following are not
 23 required to give notice of a right to claim a lien as
 24 required by this section:

25 (a) a person who furnishes services or materials

1 directly to the owner at his request;

2 (b) a wage earner or laborer who performs personal
 3 labor services for a person furnishing any service or
 4 material pursuant to a real estate improvement contract;

5 (c) a person who furnishes services or materials
 6 pursuant to a real estate improvement contract that relates
 7 to a dwelling for five or more families; and

8 (d) a person who furnishes services or materials
 9 pursuant to a real estate improvement contract that relates
 10 to an improvement that is partly or wholly commercial in
 11 character.

12 (2) A person who may claim a construction lien
 13 pursuant to this part shall give notice of his right to
 14 claim a lien to the contracting owner in order to claim a
 15 lien.

16 (3) This notice must be given no later than 20 days
 17 after the date on which the services or materials are first
 18 furnished to the contracting owner. If notice is not given
 19 within this period, a lien is enforceable only for the
 20 services or materials furnished within the 20-day period
 21 before the date on which notice is given.

22 (4) The notice of the right to claim a lien must be
 23 sent to the contracting owner by certified mail or delivered
 24 personally to him.

25 (5) A person who may claim a lien shall file with the

1 clerk and recorder of the county in which the improved real
 2 estate is located a copy of the notice of the right to claim
 3 a lien, in the form required by [section 8]. This copy must
 4 be filed no later than 20 days after the date on which the
 5 services or materials were first furnished to the
 6 contracting owner.

7 (6) At the request of any subcontractor or material
 8 supplier who may claim a lien through him, a person shall
 9 furnish to the requestor within 5 business days:

10 (a) a description of the real estate being improved,
 11 sufficient to identify it; and

12 (b) the name and address of the contracting owner.

13 NEW SECTION. Section 8. Content of notice of right to
 14 claim a lien. (1) The notice of the right to claim a lien
 15 must be in writing and state that it is a notice of a right
 16 to claim a lien against real estate for services or
 17 materials furnished in connection with improvement of the
 18 real estate.

19 (2) The notice must contain a description sufficient
 20 to identify the real estate against which the lien may be
 21 claimed.

22 (3) The notice must contain the following information
 23 and be in substantially the following form:

1 NOTICE OF THE RIGHT TO CLAIM A LIEN
 2 WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY
 3 CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

4 To:..... Date of mailing:

5 (Owner)

6

7 (Owner's address)

8 This is to inform you that has begun to
 9 provide (description of services or materials)
 10 ordered by for improvements to property you own.

11 The property is located at

12 A lien may be claimed for all services and materials
 13 furnished to you, if this notice is given to you within 20
 14 days after the date on which the services or materials
 15 described are first furnished to you. If the notice is not
 16 given within that time, a lien is enforceable for only the
 17 services or materials furnished within the 20-day period
 18 before the date on which the notice is given.

19 Even if you or your mortgage lender have made full
 20 payment to the contractor who ordered these services or
 21 materials, your property may still be subject to a lien
 22 unless the subcontractor or material supplier providing this
 23 notice is paid. THIS IS NOT A LIEN. It is a notice sent to
 24 you for your protection in compliance with the construction
 25 lien laws of the state of Montana.

1 This notice has been sent to you by:

2 NAME:..... IF YOU HAVE ANY
 3 ADDRESS:..... QUESTIONS ABOUT THIS
 4 TELEPHONE:..... NOTICE, PLEASE CALL US

5 IMPORTANT INFORMATION ON REVERSE SIDE

6
 7 IMPORTANT INFORMATION FOR YOUR PROTECTION

8 Under Montana's laws, those who work on your property
 9 or provide materials and are not paid have a right to
 10 enforce their claim for payment against your property. This
 11 claim is known as a construction lien.

12 If your contractor fails to pay subcontractors or
 13 material suppliers or neglects to make other legally
 14 required payments, the people who are owed money may look to
 15 your property for payment, even if you have paid your
 16 contractor in full.

17 The law states that all people hired by a contractor to
 18 provide you with services or materials are required to give
 19 you a notice of the right to lien to let you know what they
 20 have provided.

21 WAYS TO PROTECT YOURSELF ARE:

22 -- RECOGNIZE that this notice of delivery of services
 23 or materials may result in a lien against your property
 24 unless all those supplying a notice of the right to lien
 25 have been paid.

1 -- LEARN more about the construction lien laws and the
 2 meaning of this notice by contacting an attorney or the firm
 3 sending this notice.

4 -- WHEN PAYING your contractor for services or
 5 materials, you may make checks payable jointly to the
 6 contractor and the firm furnishing services or materials for
 7 which you have received a notice of the right to lien.

8 -- OBTAIN EVIDENCE that all firms from whom you have
 9 received a notice of the right to lien have been paid or
 10 have waived the right to claim a lien against your property.
 11 -- CONSULT an attorney, a professional escrow company,
 12 or your mortgage lender.

13 NEW SECTION. Section 9. Attachment of lien -- filing.

14 (1) A person's lien does not attach and may not be enforced
 15 unless, after entering into the contract under which the
 16 lien arises, he has filed a lien not later than 90 days
 17 after:

18 (a) his final furnishing of services or materials; or
 19 (b) the owner files a notice of completion pursuant to
 20 71-3-512.

21 (2) (a) The lien must be filed with the county clerk
 22 and recorder of the county in which the improved real estate
 23 is located.

24 (b) The person claiming the lien must certify to the
 25 county clerk and recorder that a copy of the lien has been

1 served on the owner of record as provided in 71-3-513(2).

2 (3) The lien statement must contain:

3 (a) the name and address of the person claiming the
4 lien;

5 (b) a description of the real property against which
6 the lien is claimed sufficient to identify it;

7 (c) the name of the contracting owner;

8 (d) the name and address of the party with whom the
9 person claiming the lien contracted to furnish services or
10 materials;

11 (e) a description of the services or materials
12 provided;

13 (f) the amount unpaid for services or materials or, if
14 no amount is fixed by the contract, a good faith estimate of
15 the amount unpaid, designated as an estimate;

16 (g) (i) the date on which the services or materials
17 were first furnished; and

18 (ii) the date on which the services or materials were
19 last furnished; and

20 (h) a declaration that a notice of a right to claim a
21 lien was given to the contracting owner or an explanation of
22 why such notice was not required.

23 (4) A lien notice that is filed pursuant to this
24 section before the person claiming the lien has
25 substantially furnished services or materials pursuant to a

1 real estate improvement contract is not effective to create
2 a construction lien unless the lien claimant is prevented
3 from fulfilling his obligation because of the fault of
4 another person.

5 (5) Except as provided in subsection (6), a lien
6 attaches at the commencement of work as defined in [section
7 2].

8 (6) A lien attaches when it is filed if it is for the
9 preparation of plans, surveys, or architectural or
10 engineering plans or drawings for any change in the physical
11 condition of land or structures that are not used incident
12 to producing a change in the physical condition of the real
13 estate.

14 NEW SECTION. Section 10. Content of lien notice. The
15 notice for the lien provided for in [section 9] may be filed
16 in substantially this form:

17 Construction Lien

18 I, . . . (insert name and address of person claiming
19 the construction lien), claim a construction lien pursuant
20 to Title 71, chapter 3, of the Montana Code Annotated.

21 I claim this lien against . . . (give description of
22 the real property against which the lien is claimed
23 sufficient to identify it). The contracting owner is . . .
24 (insert name of the person who owns the real estate and name
25 of the person who entered into the contract to improve it).

1 At the request of (give name and address of
 2 party with whom person claiming the lien contracted to
 3 furnish services or materials), I provided the following:
 4 (give description of the services or materials
 5 provided). The amount remaining unpaid is (insert
 6 the amount unpaid; if no amount was fixed by the contract,
 7 give your good faith estimate of the amount and identify it
 8 as an estimate).
 9 I first furnished these services or materials on
 10 (give date) and last furnished services or materials
 11 on (give date; if the date has not yet arrived,
 12 insert an estimate of the date on which services or
 13 materials will be last furnished and identify the date as an
 14 estimate).

15 I gave notice of the right to claim a lien as required
 16 by [section 7] on (give date) to (give name
 17 of contracting owner). . . . (If it is not required to
 18 give a notice of the right to claim a lien, state the reason
 19 it is not required.)

20 NEW SECTION. Section 11. Priority among holders of
 21 construction liens. (1) There is equal priority between or
 22 among construction lien claimants who contribute to the same
 23 real estate improvement project, regardless of the date on
 24 which each lien claimant first contributed services or
 25 materials and regardless of the date on which he filed his

1 notice of lien. When the proceeds of a foreclosure sale are
 2 not sufficient to pay all construction lien claimants in
 3 full, each claimant will receive a pro rata share of the
 4 proceeds based on the amount of his respective lien.

5 (2) Construction liens attaching at different times
 6 have priority in the order of attachment.

7 NEW SECTION. Section 12. Priority of construction
 8 liens as against claims other than construction lien claims.

9 (1) A construction lien arising under this part has priority
 10 over any other interest, lien, mortgage, or encumbrance that
 11 may attach to the building, structure, or improvement or on
 12 the real property on which the building, structure, or
 13 improvement is located and which is filed after the
 14 construction lien attaches.

15 (2) An interest, lien, mortgage, or encumbrance that
 16 is filed before the construction lien attaches has priority
 17 over a construction lien arising under this part, except as
 18 provided in subsections (3) and (4).

19 (3) A construction lien has priority, to the extent of
 20 the value of the work or improvement that is severable, over
 21 an interest, lien, mortgage, or encumbrance that is filed
 22 before the construction lien attaches. If the work or
 23 improvement may be removed without harm to the rest of the
 24 real property, the lienholder may have the value determined,
 25 the work or improvement sold separately on foreclosure, and

1 the proceeds delivered to him to satisfy the construction
2 lien.

3 (4) A construction lien has priority over any
4 interest, lien, mortgage, or encumbrance that is filed
5 before the construction lien attaches if that interest,
6 lien, mortgage, or encumbrance was taken to secure advances
7 made for the purpose of paying for the particular real
8 estate improvement being liened.

9 Section 13. Section 71-3-512, MCA, is amended to read:
10 "71-3-512. Notice of completion. (1) The contracting
11 owner may file a notice of completion at any time after the
12 completion of any work or improvement.

13 (2) The following acts or events constitute completion
14 of any work or improvement for the purpose of filing a
15 notice of completion:

16 (a) the written acceptance by the contracting owner,
17 his agent, or representative of the building, improvement,
18 or structure. The filing of a notice of completion shall not
19 be considered as an acceptance of the building, improvement,
20 or other structure.

21 (b) the cessation from labor for 30 days upon any
22 building, improvement, or structure, or the alteration,
23 addition to, or repair thereof.

24 (3) The notice of completion together with an
25 affidavit of publication as hereinafter required shall be

1 filed in the office of the county clerk and recorder of the
2 county where the property is situated and the notice shall
3 set forth:

4 (a) the date when the work or improvement was
5 completed or the date on which cessation from labor occurred
6 first and the period of its duration;

7 (b) the contracting owner's name or ~~owners~~ ~~names~~ ~~as~~
8 ~~the case may be~~ ~~the~~ and address of ~~the owner~~ ~~or~~ ~~addresses~~
9 ~~of the owners~~ ~~as~~ ~~the case may be~~ and the nature of the
10 title, if any, of the person signing the notice;

11 (c) a description of the property sufficient for
12 identification;

13 (d) the name of the contractor, if any.

14 (4) The notice shall be verified by the contracting
15 owner or his agent.

16 (5) A copy of the notice of completion shall be
17 published once each week for 3 successive weeks in a
18 newspaper of general circulation in the county where the
19 land on which the work or improvement was performed is
20 situated.

21 (6) The contracting owner shall give a copy of the
22 notice of completion to any person who has given the
23 contracting owner a notice of a right to claim a lien."

24 Section 14. Section 71-3-516, MCA, is amended to read:
25 "71-3-516. Substitution of bond allowed -- filing --

1 amount -- condition. (1) Whenever a mechanic's construction
 2 lien has been filed upon real property or any improvements
 3 thereon, ~~as enumerated in 71-3-501~~, the contracting owner of
 4 any interest in such property, whether legal or beneficial,
 5 may, at any time before the lien claimant has commenced an
 6 action to foreclose such lien, file a bond with the clerk of
 7 the district court in the county in which such property is
 8 situated or, if such property is situated in more than one
 9 county, with the clerk of the district court of any county
 10 in which a part of such property is situated.

11 (2) Such bond shall be in an amount 1 1/2 times the
 12 amount of the lien and shall be either in cash or written by
 13 a corporate surety company. If written by a corporate
 14 surety, such bond shall be approved by a judge of the
 15 district court with which such bond is filed.

16 (3) The bond shall be conditioned that if the lien
 17 claimant shall be finally adjudged to be entitled to recover
 18 upon the claim upon which his lien is based, the principal
 19 or his sureties shall pay to such claimant the amount of his
 20 judgment, together with any interest, costs, attorneys'
 21 fees, and other sums which such claimant would be entitled
 22 to recover upon the foreclosure of a lien against the
 23 principal."

24 Section 15. Section 70-23-607, MCA, is amended to
 25 read:

1 "70-23-607. Claim for common expenses -- priority of
 2 lien -- contents -- recording. (1) Whenever an association
 3 of unit owners acting through its manager furnishes to a
 4 unit any services, labor, or material lawfully chargeable as
 5 common expenses, the association of unit owners, upon
 6 complying with subsection (2) of this section, shall have a
 7 lien upon the individual unit and the undivided interest in
 8 the common elements appertaining to such unit for the
 9 reasonable value of such common expenses, and the lien shall
 10 be prior to all other liens or encumbrances upon the unit
 11 except:
 12 (a) tax and assessment liens; and
 13 (b) a first mortgage or trust indenture of record.
 14 (2) An association of unit owners claiming the
 15 benefits of subsection (1) of this section shall record in
 16 the county in which the unit or some part thereof is located
 17 a claim containing:
 18 (a) a true statement of the account due for such
 19 common expenses after deducting all just credits and
 20 offsets;
 21 (b) the name of the owner of the unit or reputed
 22 owner, if known;
 23 (c) a description of the property where the common
 24 expenses were furnished and the designation of the unit,
 25 sufficient for identification.

(3) The claim shall be verified by the oath of some person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under 71-3-501 Title 71, chapter 3, part 5. The record shall be indexed as deeds and other conveyances are required by law to be indexed."

Section 16. Section 70-23-608, MCA, is amended to read:

"70-23-608. Foreclosure of lien under claim for common expenses -- action without foreclosure. (1) The proceedings to foreclose liens created by 70-23-607 shall conform as nearly as possible to the proceedings to foreclose liens created by 71-3-501 Title 71, chapter 3, part 5. The lien may be enforced by the manager acting on behalf of the association of unit owners.

(2) An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses."

NEW SECTION. Section 17. Repealer. Sections 71-3-501 through 71-3-503, 71-3-511, and 71-3-514, MCA, are repealed.

NEW SECTION. Section 18. Codification instruction. Sections 1 through 12 are intended to be codified as an integral part of Title 71, chapter 3, part 5, and the provisions of Title 71, chapter 3, part 5, apply to sections 1 through 12.

NEW SECTION. Section 19. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

NEW SECTION. Section 20. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 21. Applicability. This act applies to real estate improvement contracts made after September 30, 1987.

-End-

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE INTERIM SUBCOMMITTEE ON LIEN LAWS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING NOTICE TO THE
6 OWNER OR PERSON WHO CONTRACTED FOR THE SERVICES OR MATERIALS
7 PRIOR TO A SHERIFF'S SALE OF PROPERTY SOLD TO ENFORCE AN
8 AGISTER'S LIEN OR LIEN FOR SERVICES; AND AMENDING SECTION
9 71-3-1203, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 71-3-1203, MCA, is amended to read:
13 "71-3-1203. Enforcement of lien -- sale. If payment
14 for such work, labor, feed, or services or material
15 furnished is not made within 30 days after the performance
16 or furnishing of the same, the person entitled to a lien
17 under the provisions of this section part may enforce said
18 lien in the following manner:

19 (1) He shall deliver to the sheriff or a constable of
20 the county in which the property is located a--statement an
21 affidavit of the amount of his claim against said property,
22 a description of the property, and the name of the owner
23 thereof or of the person at whose request the work, labor,
24 or services were performed or the materials furnished.

25 (2) Upon receipt of such statement affidavit, the

1 sheriff or constable shall proceed to advertise and sell at
2 public auction so much of the property covered by said lien
3 as will satisfy same.

4 (3) Such sale shall be advertised, conducted, and held
5 in the same manner as provided by law for the sale of
6 mortgaged personal property by sheriffs. ~~Such--notice--shall~~
7 Public notice of the sale must be given for not less than 5
8 or more than 10 days prior to the date of sale.

9 (4) Before the sheriff or constable sells the property
10 at public auction, he shall give notice of the sale to the
11 owner or person at whose request the work, labor, or
12 services were performed or the materials furnished.

13 (a) Notice to the owner must be given at least 10 days
14 before the sale in the manner most reasonably calculated to
15 appraise the owner or person who contracted for the services
16 or materials of the sale.

17 (b) The notice must state:

18 (i) the time and place of the sale;

19 (ii) the amount of the claim against the property;

20 (iii) a description of the property;

21 (iv) the name of the owner or person who contracted for
22 the services or materials; and

23 (v) the name of the person claiming the lien.

24 (c) The notice may be given by personal service or by
25 mailing by certified mail a copy of the notice to the

1 last-known post office address of the owner or person who
2 contracted for the services or materials.

3 (d) If the sheriff or constable is not able to effect
4 personal service or service by mail because the location and
5 mailing address of the owner or person who contracted for
6 the services or materials are unknown, the sheriff or
7 constable may give notice by posting notice of the sale in
8 three public places in the county in which the property is
9 located.

10 †4†(5) The proceeds of the sale shall be applied by
11 the sheriff to the discharge of the lien and the cost of the
12 proceedings in selling the property and enforcing the lien,
13 and the remainder, if any, or such part as is required to
14 discharge the claims, shall be turned over by the sheriff to
15 the holders, in the order of their precedence, of the
16 chattel mortgages or other lien claimants of record against
17 said property, and the balance of the proceeds shall be
18 turned over to the owner of the property.

19 †5†(6) However, before making seizure of any property
20 under the provisions of this section, the sheriff may
21 require an indemnity bond from the lienor in not to exceed
22 double the amount of the claim against said property, said
23 bond and the surety or sureties thereon to be approved by
24 said sheriff."

-End-



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